

the taxable year of the trust in which the transfer is made, the deduction otherwise allowable to the trust under section 642(c) is limited by section 681(b)(1) by reason of the trust having engaged in a prohibited transaction described in section 681(b)(2), or (2) the transfer is made to a corporation, community chest, fund or foundation which, for its taxable year in which the transfer is made, is not exempt from income tax under section 501(a) by reason of having engaged in a prohibited transaction described in section 503(c).

(b) For purposes of section 681(b)(5) and section 503(e), the term “transfer” includes any gift, contribution, bequest, devise, legacy, or other disposition. In applying such sections for estate tax purposes, a transfer, whether made during the decedent’s lifetime or by will, is considered as having been made at the moment of the decedent’s death.

(c) The income tax regulations contain the rules for the determination of the taxable year of the trust for which the deduction under section 642(c) is limited by section 681(b) and for the determination of the taxable year of the organization for which an exemption is denied under section 503(a). Generally, such taxable year is a taxable year subsequent to the taxable year during which the trust or organization has been notified by the Commissioner of Internal Revenue that it has engaged in a prohibited transaction. However, if the trust or organization during or prior to the taxable year entered into the prohibited transaction for the purpose of diverting its corpus or income from the charitable or other purposes by reason of which it is entitled to a deduction or exemption, and the transaction involves a substantial part of the income or corpus, then the deduction of the trust under section 642(c) for such taxable year is limited by section 681(b), or exemption of the organization for such taxable year is denied under section 503(a), whether or not the organization has previously received notification by the Commissioner of Internal Revenue that it is engaged in a prohibited transaction. In certain cases, the limitation of section 681 or 503 may be removed or the exemption may be reinstated for certain subse-

quent taxable years under the rules set forth in the income tax regulations under sections 681 and 503. In cases in which prior notification by the Commissioner of Internal Revenue is not required in order to limit the deduction of the trust under section 681(d) or to deny exemption of the organization under section 503, the deduction otherwise allowable under section 2055 is not disallowed in respect of transfers made during the same taxable year of the trust or organization in which a prohibited transaction occurred or in a prior taxable year unless the decedent or a member of his family was a party to the prohibited transaction. For the purpose of the preceding sentence, the members of the decedent’s family include only his brothers and sisters, whether by whole or half blood, spouse, ancestors, and lineal descendants.

(d) This section applies only in the case of decedents dying before January 1, 1970. In the case of decedents dying after December 31, 1969, see § 20.2055-5.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960 as amended by T.D. 7318, 39 FR 25456, July 11, 1974]

**§ 20.2055-5 Disallowance of charitable, etc., deductions in the case of decedents dying after December 31, 1969.**

(a) *Organizations subject to section 507(c) tax.* Section 508(d)(1) provides that, in the case of decedents dying after December 31, 1969, a deduction which would otherwise be allowable under section 2055 for the value of property transferred by the decedent to or for the use of an organization upon which the tax provided by section 507(c) has been imposed shall not be allowed if the transfer is made by the decedent after notification is made under section 507(a) or if the decedent is a substantial contributor (as defined in section 507(d)(2)) who dies on or after the first day on which action is taken by such organization that culminates in the imposition of the tax under section 507(c). This paragraph does not apply if the entire amount of the unpaid portion of the tax imposed by section 507(c) is abated under section 507(g) by the Commissioner or his delegate.

(b) *Taxable private foundations, section 4947 trusts, etc.*—(1) *In general.* Section 508(d)(2) provides that, in the case of decedents dying after December 31, 1969, a deduction which would otherwise be allowable under section 2055 for the value of property transferred by the decedent shall not be allowed if the transfer is made to or for the use of—

(i) A private foundation or a trust described in section 4947(a)(2) in a taxable year of such organization for which such organization fails to meet the governing instrument requirements of section 508(e) (determined without regard to section 508(e)(2) (B) and (C)), or

(ii) Any organization in a period for which it is not treated as an organization described in section 501(c)(3) by reason of its failure to give notification under section 508(a) of its status to the Commissioner.

For additional rules, see § 1.508-2(b) (1) of this chapter (Income Tax Regulations).

(2) *Transfers not covered by section 508(d)(2)(A)*—(i) *In general.* Any deduction which would otherwise be allowable under section 2055 for the value of property transferred by a decedent dying after December 31, 1969, will not be disallowed under section 508(d)(2)(A) and subparagraph (1)(i) of this paragraph—

(a) In the case of property passing under the terms of a will executed on or before October 9, 1969—

(1) If the decedent dies after October 9, 1969, but before October 9, 1972, without having amended any dispositive provision of the will after October 9, 1969, by codicil or otherwise,

(2) If the decedent dies after October 9, 1969, and at no time after that date had the right to change the portions of the will which pertain to the passing of the property to, or for the use of, an organization described in section 2055(a), or

(3) If no dispositive provision of the will is amended by the decedent, by codicil or otherwise, after October 9, 1969, and before October 9, 1972, and the decedent is on October 9, 1972, and at all times thereafter under a mental disability (as defined in § 1.642(c)-2(b)(3)(ii) of this chapter) to amend the will by codicil or otherwise, or

(b) In the case of property transferred in trust on or before October 9, 1969—

(1) If the decedent dies after October 9, 1969, but before October 9, 1972, without having amended, after October 9, 1969, any dispositive provision of the instrument governing the disposition of the property,

(2) If the property transferred was an irrevocable interest to, or for the use of, an organization described in section 2055(a), or

(3) If no dispositive provision of the instrument governing the disposition of the property is amended by the decedent after October 9, 1969, and before October 9, 1972, and the decedent is on October 9, 1972, and at all times thereafter under a mental disability (as defined in § 1.642(c)-2(b)(3)(ii) of this chapter) to change the disposition of the property.

(ii) *Amendment of dispositive provisions.* For purposes of subdivision (i) of this subparagraph, the provisions of paragraph (e) (4) and (5) of § 20.2055-2 shall apply in determining whether an amendment will be considered as one which amends the dispositive provisions of a will or trust.

(c) *Foreign organization with substantial support from foreign sources.* Section 4948(c)(4) provides that, in the case of decedents dying after December 31, 1969, a deduction which would otherwise be allowable under section 2055 for the value of property transferred by the decedent to or for the use of a foreign organization which has received substantially all of its support (other than gross investment income) from sources without the United States shall not be allowed if the transfer is made (1) after the date on which the Commissioner has published notice that he has notified such organization that it has engaged in a prohibited transaction, or (2) in a taxable year of such organization for which it is not exempt from taxation under section 501(a) because it has engaged in a prohibited transaction after December 31, 1969.

[T.D. 7318, 39 FR 25456, July 11, 1974]